

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEPHTY CRUZ and MICHAEL BALLETTO, as TRUSTEES OF THE DISTRICT 6 INTERNATIONAL UNION OF INDUSTRIAL, SERVICE, TRANSPORT AND HEALTH EMPLOYEES HEALTH AND PENSION PLANS, TRUSTEES OF THE DISTRICT 6 INTERNATIONAL UNION OF INDUSTRIAL, SERVICE, TRANSPORT AND HEALTH EMPLOYEES PENSION PLAN,

Plaintiffs,

-against-

PINNACLE MANAGING CO., LLC; REALTY CORP., LLC, a/k/a 3647 REALTY CO., LLC a/k/a 3657 REALTY CO., LLC; and WIENER REALTY, LLC,

Defendants.

07 Civ. 6391 (GBD)

**DECLARATION OF
KELLIE TERESE
WALKER, ESQ. IN
SUPPORT OF ORDER
COMPELLING
DEFENDANTS'
COOPERATION IN
CONDUCT OF AN
AUDIT**

KELLIE TERESE WALKER hereby declares that:

1. I am over the age of 18 and I am competent to testify in this proceeding.
2. I have personal knowledge of the matters set forth herein.
3. I am an attorney employed by the law firm of Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC ("BIVAS") which represents Plaintiffs in the above-captioned case.
4. On July 12, 2007, Plaintiffs commenced this action by filing a Complaint against Defendants Pinnacle Managing Co., LLC ("Pinnacle"), Realty Corp. , LLC a/k/a 3647 Realty Co., LLC a/k/a 3657 Realty Co., LLC ("Realty") and Wiener Realty, LLC ("Wiener"). Plaintiffs commenced this suit against Defendants under the Employee Retirement Income Security Act ("ERISA") of 1974, as amended, 29 U.S.C. § 1001, *et seq.*, for collection of delinquent contributions, and under the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §

185, for breach of a collective bargaining agreement. In their Complaint, Plaintiffs seek, *inter alia*, an order directing Defendants to permit and cooperate in the conduct of an audit of their books and records.

5. On July 12, 2007, the Clerk of this Court issued Summonses against Defendants.

6. On July 26, 2007, Defendants Pinnacle, Realty and Wiener were served with process.

7. Defendants' responses to the Complaint were due on or before August 15, 2007.

8. By letter, dated August 15, 2007, pursuant to the Court's order entered on August 10, 2007, Plaintiffs notified Defendants of the initial pretrial conference and forwarded a copy of the Civil Case Management Plan and Scheduling Order.

9. On August 28, 2007, during the period in which Defendants were in default for failing to respond to the Complaint and in which Plaintiffs were preparing to file a Motion for Default Judgment against Defendants, Krishna Shah, counsel for Defendants, contacted me by telephone and requested an extension of time for Defendants to respond to the Complaint. In response, and as a condition of Plaintiffs' agreement to extend Defendants' time to respond to the Complaint, I requested that Defendants agree to the conduct of a payroll audit by Plaintiffs' auditors. That date, pursuant to her request, I forwarded via e-mail to Ms. Shah copies of the executed Affidavits of Service of Process on Defendants. A true copy of the August 28, 2007 e-mail to Ms. Shah is annexed hereto as Exhibit A. Further, in my e-mail of August 28, 2007 to Ms. Shah, I forwarded a copy of my letter of August 15, 2007 to Defendants regarding notice of the initial court conference. Exhibit A. Moreover, in my e-mail of August 28, 2007 to Ms. Shah, I requested a response from Defendants as to whether they agreed to cooperate in the conduct of an audit and would schedule the audit within approximately one week. *Id.*

10. From August 28, 2007 through September 5, 2007, Ms. Shah failed to respond to our telephone conversation of August 28, 2007, my August 28, 2007 e-mail to her and at least one voicemail message to her regarding the Stipulation and requesting Defendants' scheduling of the audit. *See Exhibit A.*

11. On September 5, 2007, apparently in response to my requests for follow-up, I received an e-mail from Ms. Shah in which she provided her contact information and notifying me that Defendants would request an adjournment of the court conference from October 10, 2007 to "some time after the audit takes place" and that Defendants had "yet to hear from [Plaintiffs'] auditors." Further, in her e-mail of September 5, 2007, Ms. Shah inquired as to the dates on which Plaintiffs' auditors "might be able to conduct the audit." A true copy of Ms. Shah's e-mail of September 5, 2007 is attached hereto as Exhibit B.

12. On September 5, 2007, in response to Ms. Shah's e-mail of September 5, 2007, I e-mailed Ms. Shah and 1) reiterated that the terms of the parties' agreement and the Stipulation under which Ms. Shah had agreed to in principle had been for Defendants to schedule an audit as soon as possible; and 2) requested that Defendants contact Plaintiffs' auditors to schedule an audit on or before October 15, 2007. A true copy of my September 5, 2007 e-mail to Ms. Shah is annexed hereto as Exhibit C. Further, in my e-mail of September 5, 2007 to Ms. Shah, I stated that Plaintiffs would not consent to an adjournment of the conference and agreed to the Civil Case Management Plan and Scheduling Order. Exhibit C.

13. During the period from September 5, 2007 through September 17, 2007, neither counsel nor representatives for Defendants contacted Marshall & Moss to schedule an audit, even though the auditors' contact information had been given to Ms. Shah and I had left at least one voicemail message for Ms. Shah requesting a call back on the matter.

14. On September 18, 2007, 3 full weeks after I had first spoken with Ms. Shah regarding this matter, I received via e-mail from Ms. Shah a new Stipulation, significantly revised and drafted by Ms. Shah or someone from her firm. A true copy of Ms. Shah's September 18, 2007 e-mail is attached hereto as Exhibit D. The terms of the new Stipulation were as follows: "Defendants shall permit Plaintiffs to conduct an audit of Defendants' books and records *on or before October 15, 2007, or as soon thereafter as the parties' and/or their auditors' schedules permit.*" (Emphasis added). In the spirit of cooperation, and in hopes of Defendants' compliance with scheduling of an audit, the new Stipulation was signed by Charles R. Virginia, Plaintiffs' lead counsel.

15. On September 20, 2007, Plaintiffs filed the Stipulation with this Court via ECF. A true copy of the filed Stipulation is annexed hereto as Exhibit E.

16. On September 24, 2007, I received an e-mail from Ms. Shah in which she stated, *inter alia*, that Defendants might ask the Court to adjourn the court conference from October 10, 2007 to "some time after an audit takes place" and that her firm "had yet to hear from [Plaintiffs'] auditors." A true copy of Ms. Shah's September 24, 2007 e-mail is annexed hereto as Exhibit F.

17. By e-mail dated September 24, 2007 to Ms. Shah, I responded that, pursuant to the parties' agreement and the Stipulation, Defendants were to be available for an audit as soon as possible and that the audit was to be scheduled on or before October 15, 2007. A true copy of the September 24, 2007 e-mail to Ms. Shah is annexed hereto as Exhibit G.

18. On October 8, 2007, approximately 6 weeks after I first spoke with Ms. Shah and requested that Defendants schedule an audit as a condition of Plaintiffs' agreement to Defendants' extension of time to respond to the Complaint, I received an e-mail from Ms.

Shah in which she stated, *inter alia*, that her firm had contacted Defendants "with respect to scheduling an audit." A true copy of Ms. Shah's October 8, 2007 e-mail is annexed hereto as Exhibit H.

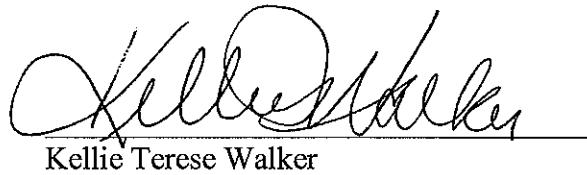
19. By letter, dated October 10, 2007 and sent via facsimile transmission, Ms. Shah requested a second extension of time to respond to the Complaint based on Defendants' inability to schedule an audit with Plaintiffs' auditors. In response, by letter of October 10, 2007 on behalf of Plaintiffs, I communicated to Ms. Shah that Plaintiffs would not consent to the Defendants' second extension of time to respond to the Complaint because Defendants failed to schedule an audit within the time provided for in the Stipulation. A true copy of the October 10, 2007 letter to Ms. Shah is annexed hereto as Exhibit I.

20. On October 15, 2007, in hopes that Defendants would schedule the audit and because Plaintiffs' auditors' scheduler had been out of the office from October 8, 2007 through October 12, 2007, I attempted to contact Ms. Shah via telephone. On calling her firm and being told that Ms. Shah was out of the office, I asked to speak to another attorney handling the matter. I was transferred to attorney Ira Glauber. Mr. Glauber, in a very unprofessional tone of voice, stated that Defendants had performed their obligations in connection with the Stipulation. In response, I communicated to Mr. Glauber that, in fact, Defendants had failed to schedule the audit and, accordingly, were in breach of the terms of the Stipulation. When I asked if he would have Defendants schedule the audit, Mr. Glauber said he would not do so.

21. As of October 17, 2007, Defendants have failed to schedule an audit and are in breach of the Stipulation.

22. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2007.



A handwritten signature in black ink, appearing to read "Kellie Walker". Below the signature, the name "Kellie Terese Walker" is printed in a smaller, sans-serif font.

U:\Winword Documents\District 6 Benefit Funds\Collections\Pinnacle Realty Corp and Wiener Joint Action\Oct. 2007 Declaration of KTW.doc

Kellie Walker

From: Kellie Walker
Sent: Tuesday, August 28, 2007 4:11 PM
To: 'kshah@jaffeandasher.com'
Subject: Cruz, et al. v. Trustees of the Dist. 6 International Union of Indus Service Transport and Health Employees Health and Pension Plans, et al. (SDNY)(07 Civ 6391)
Attachments: Affidavit of Service - Pinnacle.pdf; Affidavit of Service - Realty Corp.pdf; Affidavit of Service - Wiener.pdf; Pltfs Aug 15, 2007 Ltr to Defs re Ct Conf and Case Mgmt Plan.pdf

Dear Krishna:

As you are aware, we represent Plaintiffs in the above referenced matter. Per your request made during our telephone conversation today, attached please find the affs of svc on Defendants, which were filed on PACER. Also attached please find Plaintiffs' letter, dated August 15, 2007, to Defendants regarding notice of initial conference and case management plan in this case.

Plaintiffs claim, *inter alia*, audit access for the period from January 2003 to the present. Please advise whether your clients will consent to an audit and schedule same within the next week or so.

Thank you. I rely on your prompt response and your contact information.

Very truly yours,
/s/

Kellie Terese Walker, Esq.
Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
Trinity Centre
111 Broadway, Suite 1403
New York, New York 10006
Office Tel. No.: (212) 943-9080
Facsimile No.: (212) 943-9082
E-Mail: kwalker@bivas.net

Exhibit A

Kellie Walker

From: Krishna J.. Shah [KSHAH@jaffeandasher.com]
Sent: Wednesday, September 05, 2007 3:11 PM
To: Kellie Walker
Subject: RE: Cruz, et al. v. Trustees of the Dist. 6 International Union of Indus Service Transport and Health Employees Health and Pension Plans, et al. (SDNY)(07 Civ 6391)

My contact information is set forth below. I look forward to receiving a stipulation from you. It is my understanding that you have agreed to give us an extension to file an Answer through October 15, 2007. Thanks.

Krishna J. Shah, Esq.
Jaffe & Asher LLP
600 Third Avenue
New York, NY 10016
Direct Dial: 646 313-2539
Fax: 212 687-9639

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size=2 width="100%" align=center tabindex=-1>

From: Kellie Walker [mailto:kwalker@bivas.net]
Sent: Tuesday, August 28, 2007 4:11 PM
To: Krishna J.. Shah
Subject: Cruz, et al. v. Trustees of the Dist. 6 International Union of Indus Service Transport and Health Employees Health and Pension Plans, et al. (SDNY)(07 Civ 6391)

Dear Krishna:

As you are aware, we represent Plaintiffs in the above referenced matter. Per your request made during our telephone conversation today, attached please find the affs of svc on Defendants, which were filed on PACER. Also attached please find Plaintiffs' letter, dated August 15, 2007, to Defendants regarding notice of initial conference and case management plan in this case.

Plaintiffs claim, *inter alia*, audit access for the period from January 2003 to the present. Please advise whether your clients will consent to an audit and schedule same within the next week or so.

Thank you. I rely on your prompt response and your contact information.

Very truly yours,

/s/

Kellie Terese Walker, Esq.
Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
Trinity Centre
111 Broadway, Suite 1403
New York, New York 10006
Office Tel. No.: (212) 943-9080
Facsimile No.: (212) 943-9082
E-Mail: kwalker@bivas.net

Exhibit B

--
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dangerous content by ESVA, and is believed
to be clean.

Kellie Walker

From: Kellie Walker
Sent: Wednesday, September 05, 2007 4:08 PM
To: 'Krishna J.. Shah'
Subject: RE: Cruz, et al. v. Trustees of the Dist. 6 International Union of Indus Service Transport and Health Employees Health and Pension Plans, et al. (SDNY)(07 Civ 6391)
Attachments: Stipulation extending time to answer Sept 5, 2007.pdf

Dear Krishna:

Attached please find the Stipulation for your review and signature. Kindly forward to me the signed Stipulation and we will have it filed with the Court. Pursuant to our telephone conversation today, the contact information for the Plaintiffs' auditors is:

Contact: Joe Muzzillo
Marshall & Moss LLP
Tel. No.: (212) 255-2950, ext.161

Should you have any questions, do not hesitate to contact me.

Very truly yours,

/s/

Kellie Terese Walker, Esq.
Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
Trinity Centre
111 Broadway, Suite 1403
New York, New York 10006
Office Tel. No.: (212) 943-9080
Facsimile No.: (212) 943-9082
E-Mail: kwalker@bivas.net

From: Krishna J.. Shah [mailto:KSHAH@jaffeandasher.com]

Sent: Wednesday, September 05, 2007 3:11 PM

To: Kellie Walker

Subject: RE: Cruz, et al. v. Trustees of the Dist. 6 International Union of Indus Service Transport and Health Employees Health and Pension Plans, et al. (SDNY)(07 Civ 6391)

My contact information is set forth below. I look forward to receiving a stipulation from you. It is my understanding that you have agreed to give us an extension to file an Answer through October 15, 2007. Thanks.

Krishna J. Shah, Esq.
Jaffe & Asher LLP
600 Third Avenue
New York, NY 10016
Direct Dial: 646 313-2539
Fax: 212 687-9639

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<hr size=2 width="100%" align=center tabindex=-1>

From: Kellie Walker [mailto:kwalker@bivas.net]

Exhibit C

Sent: Tuesday, August 28, 2007 4:11 PM

To: Krishna J.. Shah

Subject: Cruz, et al. v. Trustees of the Dist. 6 International Union of Indus Service Transport and Health Employees Health and Pension Plans, et al. (SDNY)(07 Civ 6391)

Dear Krishna:

As you are aware, we represent Plaintiffs in the above referenced matter. Per your request made during our telephone conversation today, attached please find the affs of svc on Defendants, which were filed on PACER. Also attached please find Plaintiffs' letter, dated August 15, 2007, to Defendants regarding notice of initial conference and case management plan in this case.

Plaintiffs claim, *inter alia*, audit access for the period from January 2003 to the present. Please advise whether your clients will consent to an audit and schedule same within the next week or so.

Thank you. I rely on your prompt response and your contact information.

Very truly yours,

/s/

Kellie Terese Walker, Esq.
Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
Trinity Centre
111 Broadway, Suite 1403
New York, New York 10006
Office Tel. No.: (212) 943-9080
Facsimile No.: (212) 943-9082
E-Mail: kwalker@bivas.net

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Kellie Walker

From: Krishna J.. Shah [KSHAH@jaffeandasher.com]
Sent: Tuesday, September 18, 2007 9:59 AM
To: Kellie Walker
Subject: Stipulation (District 6 Litigation)
Attachments: Stipulation.pdf

Kellie:

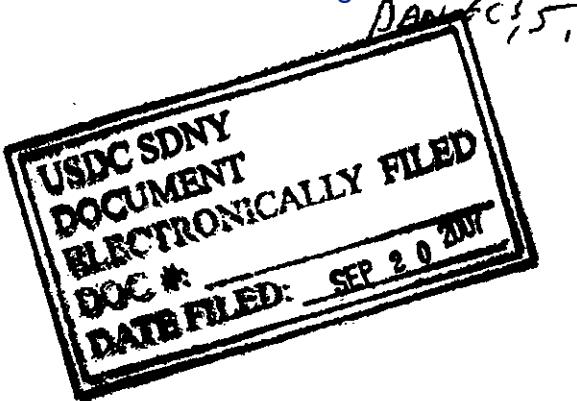
Please find the stipulation we discussed enclosed for your signature. Please send me a PDF with your signature as well. I assume that you will be filing it with the Court – If not, let me know. Thanks.

Krishna J. Shah, Esq.
Jaffe & Asher LLP
600 Third Avenue
New York, NY 10016
Direct Dial: 646 313-2539
Fax: 212 687-9639

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Exhibit D



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

NEPHY CRUZ and MICHAEL BALLETTO, as
TRUSTEES OF THE DISTRICT 6 INTERNATIONAL
UNION OF INDUSTRIAL, SERVICE, TRANSPORT
AND HEALTH EMPLOYEES HEALTH AND
PENSION PLANS, TRUSTEES OF THE DISTRICT 6
INTERNATIONAL UNION OF INDUSTRIAL,
SERVICE, TRANSPORT AND HEALTH EMPLOYEES
PENSION PLAN,

Plaintiffs,

- against -

PINNACLE MANAGING CO., LLC; REALTY CORP.,
LLC, a/k/a 3647 REALTY COL, LLC a/k/a 3657
REALTY COL, LLC; and WIENER REALTY, LLC,

STIPULATION AND ORDER

Defendants.

X

IT IS HEREBY STIPULATED AND AGREED, by and between the
undersigned, that the time for Defendants to move, answer, or otherwise plead with respect
to the Complaint in the above-captioned action shall be and is hereby extended through
and including October 15, 2007 on the condition that Defendants shall permit Plaintiffs to

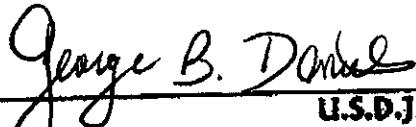
conduct an audit of Defendants' books and records on or before October 15, 2007, or as soon thereafter as the parties' and/or their auditors' schedules permit.

Dated: New York, New York
September 18, 2007

By: 
Charles R. Virginia (CV 8214)
Barnes, Iaccarino, Virginia,
Ambinder & Shepherd PLLC
111 Broadway, 14th Floor
New York, New York 10006
Tel. No.: (212) 943-9080
Attorneys for Plaintiffs

SO ORDERED: SEP 19 2007

By: 
Krishna J. Shah, Esq.
Jaffe & Asher LLP
600 3rd Avenue, 9th Floor
New York, New York 10016
Tel No.: (212) 687-3000
Attorneys for Defendants


U.S.D.J.
HON. GEORGE B. DANIELS

Kellie Walker

From: Krishna J.. Shah [KSHAH@jaffeandasher.com]
Sent: Monday, September 24, 2007 3:41 PM
To: Kellie Walker
Subject: Cruz v. Pinnacle

Ms. Walker:

I write regarding several issues. First, we may be asking the Court to adjourn the conference now scheduled for 10/10 to some time after an audit takes place. We believe that the conference would be more fruitful at that point in time. Please advise whether you agree. Also, advise whether the dates on the proposed scheduling order are acceptable to you. We have yet to hear from any of your auditors. Have they told you on what dates they might be able to conduct the audit. Thanks.

Krishna J. Shah, Esq.
Jaffe & Asher LLP
600 Third Avenue
New York, NY 10016
Direct Dial: 646 313-2539
Fax: 212 687-9639

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Exhibit F

Kellie Walker

From: Kellie Walker
Sent: Monday, September 24, 2007 4:51 PM
To: 'Krishna J.. Shah'
Cc: Nicole Cohen
Subject: Cruz, et al. v. Pinnacle Managing Co., LLC, et al. (SDNY)(07 CV 6391)

Good afternoon, Krishna:

Per our last telephone conversation, the agreement was for your client to be available for an audit as soon as possible. Your clients should contact Marshall & Moss, LLP at:

Marshall & Moss Payroll Compliance Services, LLC
 1400 Old Country Road, Suite 496
 Westbury, New York 11590
 Telephone No.: (516) 333-9010

to schedule an audit on or before October 15, 2007, which is the parties' agreement pursuant to the Stipulation extending Defendants' time to answer the Complaint. On behalf of Plaintiffs, we will not consent to an adjournment of the court conference. Plaintiffs find acceptable the Civil Case Management Plan and Scheduling Order.

Please contact me if you have any questions.

Very truly yours,

/s/

Kellie Terese Walker, Esq.
 Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
 Trinity Centre
 111 Broadway, Suite 1403
 New York, New York 10006
 Office Tel. No.: (212) 943-9080
 Facsimile No.: (212) 943-9082
 E-Mail: kwalker@bivas.net

From: Krishna J.. Shah [mailto:KSHAH@jaffeandasher.com]
Sent: Monday, September 24, 2007 3:41 PM
To: Kellie Walker
Subject: Cruz v. Pinnacle

Ms. Walker:

I write regarding several issues. First, we may be asking the Court to adjourn the conference now scheduled for 10/10 to some time after an audit takes place. We believe that the conference would be more fruitful at that point in time. Please advise whether you agree. Also, advise whether the dates on the proposed scheduling order are acceptable to you. We have yet to hear from any of your auditors. Have they told you on what dates they might be able to conduct the audit. Thanks.

Krishna J. Shah, Esq.
 Jaffe & Asher LLP
 600 Third Avenue
 New York, NY 10016
 Direct Dial: 646 313-2539
 Fax: 212 687-9639

Exhibit G

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Kellie Walker

From: Krishna J.. Shah [KSHAH@jaffeandasher.com]
Sent: Monday, October 08, 2007 2:01 PM
To: Kellie Walker
Subject: Cruz v. Pinnacle
Attachments: Scheduling Order.pdf

Dear Kellie:

Please note that we have contacted our client with respect to scheduling an audit. Please sign the attached Civil Case Management Plan and Scheduling Order, so that I may submit it to Judge Daniels by October 11. Many thanks.

Krishna J. Shah, Esq.
Jaffe & Asher LLP
600 Third Avenue
New York, NY 10016
Direct Dial: 646 313-2539
Fax: 212 687-9639

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Exhibit H

Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
ATTORNEYS AT LAW

ROY BARNES*
 RICCARDO IACCARINO
 CHARLES R. VIRGINIA**
 LLOYD R. AMBINDER**
 WENDELL V. SHEPHERD

OF COUNSEL:

MARC A. TENENBAUM****
 ALBERT RODRIGUES
 GIACCHINO RUSSO

KARIN ARROSPIDE
 DANIELLE M. CARNEY
 NICOLE E. COHEN
 DANA L. HENKE^
 STEVEN KERN^^
 SAMER E. KHALAF**+
 LADONNA M. LUSHER
 HEIDI MAHER
 GILLIAN MCGOEY^^
 JAMES E. MURPHY
 KELLIE TERESA WALKER
 JUDY S. WONG

111 BROADWAY
 Suite 1403
 NEW YORK, NEW YORK 10006
 (212) 943-9080
 FAX (212) 943-9082

(Please refer all correspondence to the New York address)

258 Saw Mill River Road
 Elmsford, New York 10523
 Tel (914) 592-5740
 Fax (914) 592-3213

3 Surrey Lane
 Hempstead, N.Y. 11550
 Tel (516) 483-2990
 Fax (516) 483-0566

5 Mountain Avenue
 North Plainfield, N.J. 07060
 Tel (908) 757-2067
 Fax (908) 753-2238

* Also Admitted in PA
 ** Also Admitted in NJ
 *** Also Admitted in OH
 ^ Also Admitted in DC
 ^^ Also Admitted in CT
 + Also Admitted in MD

Via First Class Mail and Facsimile Transmission
Facsimile No.: (212) 687-9639

Krishna J. Shah, Esq.
 Jaffe & Asher LLP
 600 Third Avenue
 New York, New York 10016-1901

Re: Cruz, et al. v. Pinnacle Managing Co., LLC, et al.
Dkt. No. 07-cv-6391 (GBD)

Dear Ms. Shah:

I am in receipt of your letter, dated October 10, 2007, in which you requested Plaintiffs' consent to an extension of time for Defendants' answer to the Complaint based on Defendants' inability to schedule an audit with Plaintiffs' auditors. On behalf of Plaintiffs, we do not consent to a second extension of time for Defendants to answer the Complaint, which was filed with the Court on July 21, 2007. Plaintiffs do not consent to this second extension because: (1) Defendants failed to schedule an audit within the time provided for in the Stipulation extending Defendant's time to answer the Complaint; and (2) Defendants failed to schedule the audit within a reasonable period of time after my initial telephone conversation with you on August 29, 2007 in which I demanded Defendants' scheduling of an audit as the condition upon which Plaintiffs' would agree to the Defendants' extension of time to answer the Complaint.

Defendants clearly breached the Stipulation by refusing to timely schedule the audit. Under the terms of the Stipulation, "Defendants shall permit Plaintiffs to conduct an audit of Defendants' books and records *on or before October 15, 2007, or as soon thereafter as the parties' and/or their auditors' schedules permit.*" In your letter of October 10, 2007, you stated that Mr. Weiner called the Plaintiffs' auditors, but you failed to mention that Mr. Weiner did not call the auditors until the morning of October 10, 2007 – the date of your letter to this firm requesting an extension of time to answer.

Based on the date, *i.e.* August 29, 2007, on which we first communicated to you the Plaintiffs' demand for the audit, it took Defendants 42 days to contact the Plaintiffs' auditors. The fact that Defendants are now unable to schedule the audit until Monday, October 15, 2007 does not excuse the Defendants' culpability in delaying the scheduling and conduct of the audit. It appears, from the Defendants' actions in this litigation, that the Defendants' delays throughout this litigation are attempts to evade and avoid their obligations under the collective bargaining agreement. Accordingly, Plaintiffs will not consent to this second extension.

Very truly yours,



Kellie Terese Walker, Esq.

KTW:aa

Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
ATTORNEYS AT LAW

ROY BARNES*
 RICCARDO IACCARINO
 CHARLES R. VIRGINIA**
 LLOYD R. AMBINDER**
 WENDELL V. SHEPHERD

111 BROADWAY
 14TH FLOOR
 NEW YORK, NEW YORK 10006
 (212) 943-9080
 FAX (212) 943-9082

258 Saw Mill River Road
 Elmsford, New York 10523
 (914) 592-5740
 Fax (914) 592-3213

DENNIS M. CARIELLO
 DANIELLE CERONE
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Fax Cover Sheet

To:	Krishna J. Shah, Esq.	Firm:		Fax No.:	(212) 687-9639
To:		Firm:		Fax No.:	
Fr:	Charles R. Virginia, Esq. Kellie Terese Walker, Esq.	Firm:	Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC	Fax No.:	(212) 943-9082
Case/Matter:					
Date:	10/10/07	Pages: (including cover page)	3 pages		

Comments: Please see attached letter, dated July 18, 2007, which BIVAS received from the NYS Attorney General's office earlier today. On your review, please contact Chuck Virginia. Thank you for attention to this matter. KTW



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Oct-10-2007 3:58PM

Fax Call Report

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195	10/10/2007	3:57:11PM	Send	912126879639	1:32	3	OK

Please see attached letter, dated July 18, 2001, which HVAIS received from the NYS Attorney General's office earlier today. On your review, please contact Chuck Viggiani. Thank you for attention to this matter. KTW

Date:	10/10/07	Pages:	3 pages	(including cover page)		
From:	Charles R. Vlgyi, Esq.	From:	Bartnes, Leccatini, Shelpert, PLLC No.:	Seattle, Ambinder & (206) 943-9082	Kellee Terese Walker, Esq. Viafina, Ambinder & Fax No.:	Charles R. Vlgyi, Esq.
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